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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,807	03/08/2004	Salar Arta Kamangar	Google-40APP (GP-092-00-U	7711

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EXAMINER	
LASTRA, DANIEL	
ART UNIT	PAPER NUMBER
3688	
MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/795,807	KAMANGAR ET AL.	
	Examiner	Art Unit	
	DANIEL LASTRA	3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02/19/2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-66* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-66* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-66 have been examined. Application 10/795,807 (ARBITRATING THE SALE OF AD SPOTS TO INCREASE OFFER COMPETITION) has a filing date 03/08/2004 and Claims Priority from Provisional Application 60452683, filed 03/07/2003.

Response to Amendment

2. In response to Non Final Rejection filed 09/19/2008, the Applicant filed an Amendment on 02/19/2009, which amended claims 1-66.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 17-33 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, a method/process claim must (1) be tied to a particular machine or apparatus (see at least Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780, 787-88 (1876)) or (2) transforms a particular article to a different state or thing (see at least Gottschalk v. Benson, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. Here the claims fail to meet the above requirements because the steps are neither tied to a particular machine or apparatus nor transforms a particular article to a different state or thing. For example,

claim 17 recites "sending with a content provider including at least one computer". From said limitation the sending is not performed by the content provider because it recites "with" therefore the claim lacks structure. All the other claims have the same problem.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17-66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Said claims are indefinite because it is not clear what apparatus is performing the "sending, receiving, serving". For example, claim 17 recites "sending with a content provider including at least one computer". From said limitation the sending is not performed by the content provider because it recites "with" then what apparatus is performing the "sending". All the other claims also recite "with the" making unclear who is performing the action.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering (US 6,324,519) in view of Detering (US 2002/0116313).

Claims 1, 17, 21, 34, 50 and 54 Eldering teaches:

A computer-implemented method comprising:

a) accepting by a proxy representing at least two of (i) a first ad network, a second ad network, a first ad agency and a second ad agency (see col 9, lines 30-50 "content/opportunity provider can consist of a network of computers owned by a cable television operator and which is capable of keeping track of all the advertisement insertion opportunities"; see col 9, lines 45-50) including at least one computer, ad spot availability information for a pageview to be provided in response to a page request, the ad spot availability information accepted from a first party, (see col 11, lines 15-25);

b) multicasting, by the proxy, ad spot requests for offers using the accepted ad spot availability information to at least two second parties, wherein the at least two second parties include at least two ad networks that are different from the first party and the proxy (see col 11, lines 55-65);

C) receiving, by the proxy, offers (see col 11, lines 55-65);

d) determining, by the proxy, at least one winning ad using the offers (see col 11, lines 55-65); and

e) providing, by the proxy, information concerning at least one of the at least one winning ad to the first party (see col 12, lines 20-25).

Eldering does not expressly teach that wherein the first party is not the proxy. However, Detering teaches a system where a server (see figure 1, item 170) functions as a proxy for content providers (see figure 1, item 180) and advertisers (see figure 1,

item 110) and where said server handles request for ads opportunities from content providers and bids from advertisers in order to place an ad in the content provider based upon the winning bid (see paragraph 28-29). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Eldering's content provider such as cable operator (see col 3, lines 40-65) would function as a proxy by handling a plurality of content providers and a plurality advertisers, as taught by Detering in order that said proxy handles the bidding for placing ads into content providers sites.

Claims 2, 22, 35 and 55, Eldering teaches:

f) recording, by the proxy, first party payment information (see col 3, lines 55-65).

Claims 3 and 36, Eldering teaches:

wherein the first party is a Website owner (see col 12, lines 10-20).

Claims 4, 23, 37 and 56, Eldering teaches:

g) paying, by the proxy, the first party using the first party payment information (See col 3, lines 55-65).

Claims 5, 18, 24, 38, 51 and 57, Eldering teaches:

g) paying, by the proxy, the first party using the first party payment information and a previously agreed upon guarantee (see col 3, lines 55-65).

Claims 6, 19, 25, 39, 52 and 58, Eldering teaches:

g) paying, by the proxy, the first party using the first party payment information and a previously agreed upon guarantee (See col 3, lines 55-65) but does not teach wherein the previously agreed upon guarantee includes a profit percentage. However, Official Notice is taken that a proxy charges for serving as an intermediary between different entities in order to cover the cost for said serving. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Eldering's cable operators (see col 3, lines 45-55) would charge content providers and advertisers a fee as a profit percentage for serving as an intermediary between content providers and advertisers in order that said cable operators are able to cover the cost for said serving.

Claims 7 and 40, Eldering teaches:

f) recording by the proxy, second party billing information (see col 3, lines 55-65).

Claims 8 and 41, Eldering teaches:

wherein the act of multicasting ad spot requests for offers includes sending an ad spot request for offer to at least two of (i) a first ad network, (ii) a second ad network, (iii) a first ad agency, and (iv) a second ad agency (see col 11, lines 55-62 "receiving bids from multiple advertisers in order to obtain the highest bid possible for a commercial spot").

Claims 9, 20, 26, 42, 53 and 59, Eldering teaches:

wherein the ad spot availability information includes offer rules (see col 11, lines 15-25).

Claims 10, 27, 43 and 60, Eldering teaches:

wherein at least some of the ad spot requests for offers include at least some of the offer rules (See col 11, lines 15-25).

Claims 11, 28, 44 and 61, Eldering teaches:

wherein the ad spot requests for offers include none of the offer rules (see col 9, lines 25-30 "consumer charge for viewing an ad").

Claims 12, 29, 45 and 62, Eldering teaches:

wherein the act of determining at least one winning ad enforces strict offer rule compliances (see col 11, lines 55-62).

Claims 13, 30, 46 and 63, Eldering does not teach:

wherein the act of determining at least one winning ad converts an offer that is not in compliance with an offer rule to a converted offer that is compliant with the offer rule. However, Detering teaches a system where offers or bids are dynamically changed in order to comply with an offer rule (see paragraph 26-28). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Eldering cable operators would adjust the bid places by advertisers in order that said bids comply with an offer rule, as Detering teaches that it is old and well known in the promotion art to adjust offers in order to comply to an offer rule.

Claims 14, 31, 47 and 64, Eldering does not teach:

wherein the act of determining at least one winning ad that converts the offer uses estimated ad performance information. However, Detering teaches a system where offers or bids are dynamically changed in order to estimate ad performance

information (see paragraph 26-28 "advertisement content seems likely to be undesired"). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Eldering cable operators would adjust the bid places by advertisers in order that said bids estimate ad performance information, as Detering teaches that it is old and well known in the promotion art to adjust offers based upon ad performance information.

Claims 15, 32, 48 and 65, Eldering does not teach:

wherein the act of determining at least one winning ad that converts the offer uses estimated ad selection rate information. However, Detering teaches a system where offers or bids are dynamically changed in order to estimate ad selection rate information (see paragraph 26-28 "update a bid based upon reaction of users to advertisements"). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Eldering cable operators would adjust the bid places by advertisers in order that said bids uses estimated ad selection rate information, as Detering teaches that it is old and well known in the promotion art to adjust offers based upon response of users to advertisements.

Claims 16, 33, 49 and 66, Eldering does not teach:

wherein the act of determining at least one winning ad that converts the offer uses estimated ad conversion rate information. However, Detering teaches a system where offers or bids are dynamically changed in order to estimate ad conversion rate information (see paragraph 26-28 "update a bid based upon reaction of users to advertisements"). Therefore, it would have been obvious to a person of ordinary skill in

the art at the time the application was made, to know that Eldering cable operators would adjust the bid places by advertisers in order that said bids uses estimated ad conversion rate information, as Detering teaches that it is old and well known in the promotion art to adjust offers based upon response of users to advertisements.

Response to Arguments

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James W. Myhre can be reached on (571)272-6722. The official Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DANIEL LASTRA/
Examiner, Art Unit 3688
June 3, 2009